

**Administrative Rule R70-340. False Or Misleading Food,
Milk And Dairy Product Labels, Labeling And Advertisements.**

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R70-340-1. Authority.

This rule is promulgated under the authority of Titles
4-3-2, 4-3-14(5)(b)(vi) and 4-5-17, Utah Code.

R70-340-2. Definitions.

(1) "Advertisement" means a representation made to
induce the purchase of a food, milk or dairy product. This
term does not include a representation on a label or
labeling.

(2) "Analytical test" means a test that follows the
Official Methods of Analysis published by the Association
of Official Analytical Chemists.

(3) "Department" means the Utah Department of Agriculture and Food.

(4) "False advertisement" means an advertisement that:

(a) implies that a food, milk or dairy product differs in quality, safety, wholesomeness, or composition from a similar food, milk or dairy product if there is no difference between the products that can be verified by an analytical test;

(b) makes a compositional claim about a food, milk or dairy product that is not verified by an analytical test;
or

(c) claims that a specific compound or substance is not present or added in a food, milk or dairy product when the compound or substance is:

(i) naturally present in the food, milk or dairy product, unless the claim is verified by an analytical test;

(ii) not naturally present in the food, milk or dairy product; or

(iii) prohibited from being present in the food, milk or dairy product by statute or rule.

(5) "False or misleading label or labeling" means a label or labeling that:

(a) implies that a food, milk or dairy product differs in quality, safety, wholesomeness, or composition from a similar food, milk or dairy product if there is no difference between the products that can be verified by an analytical test;

(b) makes a compositional claim about a food, milk or dairy product that is not verified by an analytical test;
or

(c) claims that a specific compound or substance is not present or added in a food, milk or dairy product when the compound or substance is:

(i) naturally present in the food, milk or dairy product, unless the claim is verified by an analytical test;

(ii) not naturally present in the food, milk or dairy product; or

(iii) prohibited from being present in the food, milk or dairy product by statute or rule.

(6) "Label" means a written, printed, or graphic display on the container or package of a food, milk or dairy product.

(7) "Labeling" means a label and other written, printed or graphic display:

(a) on an article of food, milk or dairy product or its containers or wrappers; or

(b) accompanying the article of food, milk or dairy product.

R70-340-3. Unlawful Acts Specified.

(1) A person may not:

(a) manufacture, sell, deliver, hold, or offer for sale a food, milk or dairy product with a false or misleading label or labeling, or

(b) disseminate a false advertisement about a food, milk or dairy product.

(2) Notwithstanding Subsection 3(1), a label, labeling or advertisement that may otherwise be false or misleading may be used if the label, labeling or advertisement includes a statement that the label, labeling or advertisement does not suggest there is a difference between the quality, safety, wholesomeness, or composition of the food, milk or dairy product and another similar food, milk or dairy product offered for sale.

(a) The statement shall be contiguous to and as readable as the claim.

(3) A person who affixes a label or labeling or disseminates an advertisement shall:

(a) maintain a record of the analytical test used to verify a claim on a label, labeling or advertisement; and

(b) have the record available for an inspection by the department.

R70-340-4. Department to review labels, labeling and advertisements.

(1) A person shall submit a label, labeling or an advertisement that makes a claim regarding the quality, safety, wholesomeness, or composition of a food, milk or dairy product to the department and receive the department's approval before:

(a) affixing the label or labeling to the food, milk or dairy product; or

(b) disseminating the advertisement.

(c) A person shall submit the results of an analytical test to verify a claim on a label, labeling or advertisement with the label or advertisement submitted under Subsection 4-1.

(2) (a) The department shall, within 30 days of receiving the label, labeling or advertisement, in writing approve or deny the label, labeling or advertisement.

(b) If the label, labeling or advertisement is not false or misleading and meets all other label, labeling and advertisement requirements, the department shall:

(i) approve the label, labeling or advertisement;

(ii) assign a unique serial number to the approved label, labeling or advertisement; and

(iii) maintain a copy of the approved label, labeling or advertisement, which may be inspected by the public.

(c) If the label, labeling or advertisement is false or misleading in any way, the department shall:

(i) deny approval of the label, labeling or advertisement; and

(ii) include in the written denial:

(A) the basis for the denial; and

(B) notice that the person may request the department to hold an administrative hearing, in compliance with Title 63, Chapter 46b, Administrative Procedures Act, on the denial.

(3) After a person receives approval of a label, labeling or advertisement under Subsection (2), the person may not alter the text, type size, or wording of the label, labeling or advertisement until after the department approves the alteration.

R70-340-5. Penalty.

Violations of any portion of this Rule may result in civil penalty of up to \$5,000.00 per occurrence, or criminal action, pursuant to Section 4-2-15. In addition, Dairy Permits may be suspended or revoked, citations of up to \$500.00 may be issued, and recalls may be initiated to recall all misbranded product(s).

KEY: food inspection, food labeling, milk labeling

Date of Enactment or Last Substantive Amendment: March 9, 2008

Authorizing, and Implemented or Interpreted Law: 4-3-2, 4-3-14(5)(b)(vi) and 4-5-17.